



June 21, 2000

Mr. John M. Deaver, II
County Attorney
County of Hall
P.O. Box 699
Memphis, Texas 79245

OR2000-2371

Dear Mr. Deaver:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 136388.

The County Clerk of Hall County (the "county clerk"), whom you represent as County Attorney, received a request for all digital real property records and indexes, preferably on CDROM. The requestor states that, if reproduction on CDROM is not possible, any digital form that exists is acceptable; however, the requestor cannot use hard copies or film. You do not assert that the requested information is not public information, nor do you claim that the information is excepted from disclosure under chapter 552 of the Government Code. Instead, you assert that the county clerk:

does not have the documents in the formats requested, and if she did have same she states that the actual costs of researching and duplicating the records would be far greater than the sums recited by the requesting party as reasonable costs.

You inform us that the county clerk has contracted with Government Records Services, Inc., for imaging services consisting of reproducing the records onto microfilm. The county clerk receives from this private entity one copy of the records on microfilm. This office does not have knowledge of the existence of the information in any form other than hard copies and microfilm, which are unacceptable to the requestor. The requestor has suggested that some of the information is maintained by the private imaging company in electronic form.

The Act requires a governmental body to provide “a suitable copy” of public information. Gov’t Code § 552.228(a). If the information exists in an electronic medium, a governmental body must provide the information in that medium if requested to do so, if:

- (1) the governmental body has the technological ability to produce a copy of the requested information in the requested medium;
- (2) the governmental body is not required to purchase any software or hardware to accommodate the request; and
- (3) provision of a copy of the information in the requested medium will not violate the terms of any copyright agreement between the governmental body and a third party.

Gov’t Code § 552.228(b). Under this provision, a county clerk must provide the requested information in an electronic form if the county clerk has the technological ability to do so, it is not required to purchase software or hardware to do so, and the provision of the information will not violate any copyright agreement.¹

You assert that the county clerk does not have the ability to produce the requested information in electronic form. When a governmental body determines that compliance with a request for information will require programming or manipulation of data, and that the information can be made available in the requested format “only at a cost that covers the programming and manipulation,” the governmental body must provide to the requestor the written statement required by section 552.231.² Gov’t Code § 552.231(a)(2)(B). If the requestor responds in writing that the requestor wants the county clerk to provide the information in the requested format according to the cost and time parameters set out in that statement or according to other terms to which the county clerk and requestor may agree, the county clerk must provide the information in the requested electronic format. Gov’t Code § 552.231(d)(1). The county clerk and requestor may agree, for example, to procure the

¹No evidence of copyright protection has been presented and no copyright argument has been advanced.

²(b) The written statement must include:

- (1) a statement that the information is not available in the requested form;
- (2) a description of the form in which the information is available;
- (3) a description of any contract or services that would be required to provide the information in the requested form;
- (4) a statement of the estimated cost of providing the information in the requested form as determined in accordance with the rules established by the General Services Commission under Section 552.262; and
- (5) a statement of the anticipated time required to provide the information in the requested form.

information through the private imaging company. *See* 1 T. A. C. § 111.70 (12) (West 1999) (General Services Commission Charge Schedule, Outsourced/ Contracted Services).

In summary, a county clerk must make public information, including public information held by a private imaging company, available according to the Act. The Act requires a governmental body to comply with the rules promulgated by the General Services Commission regarding the allowable charges for providing copies of public information in any medium. Gov't Code § 552.262.³ If reproducing the information in the requested form will require programming or manipulation, the county clerk must follow the procedures dictated by section 552.231 of the Government Code.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* 0§ 552.3215(e).

³We note that section 118.011 of the Local Government Code provides specific fees to be charged by the county clerk for copies of "each page or part of a page" of real property records. Loc. Gov't Code § 118.011(a)(3), (4). Because the records in electronic format will not constitute a number of *pages*, but will instead require a number of diskettes, we defer to the General Services Commission to determine the appropriate allowable charges.

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Patricia Michels Anderson
Assistant Attorney General
Open Records Division

PMA/pr

Ref: ID# 136388

Encl. Submitted documents

cc: Ms. Terri Wilmoth
Assistant Manager
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(w/o enclosures)